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OFFICE OF PETITIONS

In re Application of :
Donn P. Cummings : DECISION GRANTING
Application No. 10/804,570 : PETITION
Filed: 19 March, 2004 :
Attorney Docket No. DEKA:328US :

This is a decision on the petition under 37 CFR 1.53, filed on 12 August, 2004, requesting that the above-identified application, without drawings, be accorded a filing date of 19 March, 2004.

The application was filed on 19 March, 2004, without drawings.¹ Accordingly, on 9 June, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating, *inter alia*, that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. In response, on 12 August, 2004 (certificate of mailing date 9 August, 2004), the present petition was filed.

Petitioner states that the drawings were not present among the application papers filed on 19 March, 2004, but argues that the drawings are not necessary because the application contains process claims.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 15-17 are process claims and Claims 19-23 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²MPEP 601.01(f).

understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted with the present petition is unnecessary and will be credited to counsel's deposit account, No. 50-1212 as authorized in the present petition.

The "Notice of Incomplete Nonprovisional Application" mailed on 9 June, 2004, was sent in error and is hereby vacated to the extent that it stated that the application was incomplete.

The application will be processed and examined using only the application papers filed on 19 March, 2004.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 19 March, 2004, using only the application papers present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.

A handwritten signature in black ink, appearing to read "D Wood", is positioned above the typed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions